

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

THELMEAS WALKER,

Plaintiff,

v.

JEFFREY BEARD,

Defendant.

Case No. [16-cv-01280-EMC](#)

**ORDER DISSOLVING STAY AND  
REOPENING ACTION**

This federal habeas action (“2016 Petition”) was stayed so that Petitioner could exhaust a new claim in state court. Docket No. 18. In 2021, Petitioner filed a new habeas action challenging the same convictions he challenges in the instant action. *See Walker v. Eaton*, No. 21-cv-3774 (EMC) (“2021 Petition”).

Respondent moved to dismiss the 2021 Petition for being, among other things, untimely. *See* 28 U.S.C. § 2244(d). In the interest of justice, the Court dismissed the 2021 Petition and will reopen the 2016 Petition. Accordingly, the stay in the instant matter is **DISSOLVED** and the action is **REOPENED**. The Clerk is directed to modify the docket accordingly.

On or before **September 9, 2022**, Petitioner may file an amendment to the 2016 Petition. The amended petition should have the case caption and case number for the 2016 Petition on the first page (that is, it should state “*Walker v. Beard*, Case No. 16-cv-1280-EMC”), and also should be clearly marked “Amended Petition.”


The amended petition **must be a complete statement of Petitioner’s claims**. *See Lacey v. Maricopa County*, 693 F.3d 896, 928 (9th Cir. 2012) (en banc) (“For claims dismissed with prejudice and without leave to amend, we will not require that they be repleaded in a subsequent

1 amended complaint to preserve them for appeal. But for any claims voluntarily dismissed, we will  
2 consider those claims to be waived if not repled.”). This means that if Petitioner wishes to pursue  
3 any claim, whether it was raised in the 2016 or 2021 Petitions, or not previously filed in federal  
4 court, **that claim must be included in his amended petition.** In other words, any claim not  
5 included in the amended petition will be deemed waived, and the Court will order briefing only on  
6 the claims presented. Respondent need not file an answer to the amended petition until it has been  
7 reviewed by the Court pursuant to 28 U.S.C. § 2243 and Rule 4 of the Rules Governing Section  
8 2254 Cases.

9 If Petitioner does not file an amended petition by the deadline, the Court will assume that  
10 Petitioner intends to proceed only on the claims originally raised in the 2016 Petition and to waive  
11 all other claims, and will set a briefing schedule for Respondent to file an answer to the 2016  
12 Petition’s claims.

13  
14 **IT IS SO ORDERED.**

15  
16 Dated: July 28, 2022

17  
18   
19 EDWARD M. CHEN  
20 United States District Judge  
21  
22  
23  
24  
25  
26  
27  
28